PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
Dr. Scott Shell, DVM	)	Docket No. 9439
Appellant.	)	

ORDER (1) DIRECTING BRIEFING ON QUESTION OF JURISDICTION AND (2) STAYING PROCEEDINGS

Section 3058(b)(1) of the Horseracing Integrity and Safety Act ("HISA"), 15 U.S.C. § 3058(b)(1), provides that a "civil sanction imposed by the [Horseracing Integrity and Safety] Authority" ("Authority") is subject to de novo review by an Administrative Law Judge ("ALJ") at the Federal Trade Commission ("Commission"), upon application by the Federal Trade Commission or a "person aggrieved" by the Authority's civil sanction.

On October 18, 2024, Dr. Scott Shell, a veterinarian, filed an Application for Review of civil sanctions imposed against him by the Authority. The Authority imposed the sanctions in accordance with an arbitrator's decision: (1) finding that Dr. Shell possessed four banned substances in violation of the Authority's Anti-Doping and Medication Control ("ADMC") Program; and (2) assessing sanctions for the violation, including a twenty-one-month period of ineligibility and a $20,000 fine.

Also on October 18, 2024, the Horseracing Integrity and Welfare Unit ("HIWU"), the agency charged with investigating and enforcing the ADMC Program on behalf of the Authority,[1] filed an Application for Review of the civil sanctions imposed on Dr. Scott Shell. HIWU alleges that it is a "person aggrieved" by the civil sanction imposed on Dr. Shell by the Authority because of alleged errors by the arbitrator.

On October 28, 2024, the Authority filed a response in support of HIWU's Application for Review and a response to Dr. Shell's Application for Review. Also on October 28, 2024, Dr. Shell filed a Motion to Strike both HIWU's Application for Review and the Authority's response in support of HIWU, asserting, among other things, that neither entity is a "person aggrieved" within the meaning of HISA or applicable implementing regulations.

[1] HISA Rule 3010 (e), (f); *see also* 88 Fed. Reg. 5070, 5073 (Jan. 26, 2023) (FTC Notice of HISA Proposed Rule and Request for Comment) (explaining that the ADMC "Protocol will be implemented and enforced on behalf of the Authority by . . . the Horseracing Integrity and Welfare Unit" which was created for this purpose).

Neither HISA nor the Commission's rules governing applications for review of HISA civil sanctions, 16 C.F.R. § 1.145 *et. seq.*, provide that a "person aggrieved" by a civil sanction imposed by the Authority includes HIWU or the Authority. Because HIWU's and/or the Authority's standing to seek review is fundamental to the exercise of the ALJ's jurisdiction in this matter, HIWU and the Authority are each **ORDERED** to file a response to Dr. Shell's Motion to Strike, supported by applicable legal authority, affirmatively demonstrating their right to ALJ review of a civil sanction imposed by the Authority. The responses shall also address, citing applicable legal authority: (1) the legal relationship between HIWU and the Authority; and (2) whether the Authority is legally bound to impose civil sanctions determined through arbitration, or whether the Authority has discretion as to the civil sanctions imposed.

The responses filed by HIWU and by the Authority shall not exceed 2,500 words and shall be filed no later than November 12, 2024. Dr. Shell may file a reply brief, not to exceed 2,500 words, by November 19, 2024.

In addition, because of the jurisdictional question presented, it is **FURTHER ORDERED** that all proceedings in this case, including, without limitation, rulings under 16 C.F.R. § 1.146(b) and (c) on HIWU's Application for Review and on Dr. Shell's Application for Review, are **HEREBY STAYED**, pending resolution of the jurisdictional question described in this Order.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: October 29, 2024